

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NUVASIVE, INC.

Plaintiff,

V.

TIMOTHY DAY

Defendant.

Civil Action No. 1:19-cv-10800-DJC

NUVASIVE, INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS

By and through its counsel of record, and pursuant to Magistrate Judge M. Page Kelley's August 23, 2021, Report and Recommendation on Plaintiff's Renewed Motion for Sanctions for Spoliation of Evidence ("Report and Recommendation") (D.E. 217), and the Court's October 14, 2021, Electronic Order adopting the Report and Recommendation (D.E. 226), Plaintiff, NuVasive, Inc. respectfully moves for an award of \$127,214.50 in attorneys' fees and \$2,103.85 in expenses incurred via: (i) the successful prosecution of its request for sanctions pursuant to Federal Rule of Civil Procedure 37(e); (ii) its efforts to remedy Defendant's spoliation; and (iii) the preparation and filing the instant motion. In support of this motion, NuVasive states the hours expended and rates charged are reasonable, and no factors warrant any downward adjustment of the requested fees or expenses. In further support of this motion, NuVasive files and relies upon its Memorandum of Law, the Declaration of Christopher W. Cardwell, Esq., and the Declaration of Holly M. Polglase, Esq.

WHEREFORE, NuVasive respectfully requests that this Court:

- (a) grant this motion;
- (b) award NuVasive \$127,214.50 in reasonable attorneys' fees and \$2,103.85 in expenses as provided by the Report and Recommendation; and

(c) grant any other relief it deems just and proper.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

Undersigned counsel certifies that the parties have conferred regarding the narrow issues presented in this motion and that counsel for Timothy Day opposes this motion.

Respectfully submitted,

NUVASIVE, INC.

By its attorneys,

/s/ M. Thomas McFarland

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Attorneys for Plaintiff, NuVasive, Inc.

CERTIFICATE OF SERVICE

Pursuant to Local Rules 5.2(b)(2) and 5.4 of the Local Rules of the United States District Court for the District of Massachusetts, I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that paper copies will be sent by first-class mail to those indicated as non-registered participants, if any, on December 21, 2021.

/s/ M. Thomas McFarland